

**Amesbury Conservation Commission**  
**May 6, 2013**  
**Amesbury City Hall**

In attendance: Michael Bik, Jack Tremblay, Madeleine Howard, Steve Langlois Chairman, Conservation Commissioners, Conservation Agent John Lopez, and Secretary, Susan Yeames

The Chairman called the meeting to order at 6:42.

**MINUTES**

4/1/2013 Minutes – Commissioner Howard moves to accept the minutes of 3/4/2013. Commissioner Tremblay seconds the motion. All in favor.

**ADMINISTRATIVE**

**Enforcement Order/Cease and Desist DEP #002-1029 – 206 Lions Mouth Road (Couillard)**

At issue are storm water drainage violations that occurred during the winter. There was a site visit pursuant to the BSC contract on Tuesday, April 9. The site visit inspected the site as well as the down gradient resources with regard to sedimentation occurring from the projects constructed storm water wetland basin. The storm water reports from BSC found no additional sedimentation and that the site was in compliance. The Conservation Agent recommends that the Enforcement Order/Cease and Desist be lifted so that work can be completed. The Conservation Commission should expect reports outlining a synopsis of work done, work that will be conducted in the next 3 weeks and a report from BSC with their items.

Commissioner Howard moves to lift the Enforcement Order/Cease and Desist and rescind the restriction of operations at the site. Commissioner Bik seconds the motion. All are in favor.

The applicant is also before the Commission for a minor modification to the Order of Conditions. Presently the Order of Conditions calls for granite bounds to be placed at 25' intervals and he would like to change the distance between the markers. The bounds are usually 25' from the no disturb line and at 25' intervals. Commissioner Howard says that the original order should not be changed. Commissioner Langlois would like the BSC consultant to make the proper determination of placement. The Conservation Agent states that he will work with the BSC consultant to find the best placement for the site.

Commissioner Howard moves to approve the modification to the Order of Conditions pursuant to the previous discussion with a final determination of placement to be made by the BSC consultant and the Conservation Agent. The placement will be reflected in the as built plans when presented. Commissioner Bik seconds the motion. All are in favor.

### **Enforcement Order/Cease and Desist DEP #002-1005 – 100-108 Whitehall Road**

The site is stable. All issues have been addressed. No further violations have occurred and the site is in compliance. The Conservation Agent feels that it is appropriate to lift the Enforcement Order/Cease and Desist and allow the project to move forward to completion.

Commissioner Howard moves to lift the Enforcement Order/Cease and Desist at 100-108 White Hall Road. Commissioner Tremblay seconds the motion. All are in favor.

### **Letter to Dock Owner – 4 Star Lane (McDermot)**

The Conservation Commission received a letter from the property owner's attorney requesting enforcement action pursuant to a recent land court decision in McDermot v. Nagle, Belisle and Morris. The plaintiff's attorney requests that the Commission take such action to enforce State and local wetlands law. The dock is owned by an abutter but is on the property owner's property. Neither is the dock licensed. The dock is presently in the water and is in violation of the Wetlands Act. The dock owner needs to be notified that an NOI is necessary for the installation of the dock and that authorization from the property owner is also required. Also a letter should be sent to the Harbormaster outlining the violations and inquiring as to what action he intends to take in support of the unauthorized dock. The Land Court said that the dock owner could not put it on another property owner's property without permission from the owners.

Tom Hughes, Hughes Environmental represents the property owners. He states that the dock consists of three 8' sections and is violation of both State and local wetlands laws.

Commissioner Langlois feels that the dock owner should be fined and that an Enforcement Order be put into effect for the removal of the dock and a time frame should be included. He will also be required to store the dock in a proper place.

Commissioner Howard makes a motion to issue an Enforcement Order/Cease and Desist for the removal of the dock from the water and the beach immediately and will be fined if not in accordance. Commissioner Bik seconds the motion. All are in favor.

### **Enforcement Order DEP #002-1041 – CVS Main and Macy Street (Mitchell)**

The project at Main and Macy Streets has encountered unforeseen issues with a small brush fire in the immediate vicinity of the jurisdictional area. It was not negligence but an Enforcement Order was put in place in order to allow work to be performed not outlined in the Order of Conditions. Actions included immediate mediation and the creation of a plan for mitigation.

BSC Consultant Jillian Davies visited the site on Friday, May 1<sup>st</sup> and her concern is the wall that stabilizes the jurisdictional areas. Seepage is undermining the slope.

Michael Seekamp, Seekamp Environmental states that the fire burned the erosion control causing slumping on the slope but was repaired within two days' time along with new matting and cleaning the silt. Watercress will be planted to mitigate. Repairs were done in a timely fashion.

Jillian Davies, BSC Consultant, has been on the site twice and feels that the owner did a good job stabilizing the slope. There was a heavy rainstorm while the area was uncovered causing the slump. There is a persistent flow of ground water into the wetland. She suggested the creation of an intermittent stream channel using stone to prevent erosion. An ongoing mitigation report will be prepared incorporating Ms. Davies suggestions. Soils at the bottom of the slope should be checked. A berm down grade from a basin collection system has erosion and shrub roots are exposed and will need immediate attention. Michael Seekamp will look at these issues and submit a restoration plan. An engineer will need to determine if it is functioning as designed

Jim Mitchell, developer, feels that the issues were addressed immediately. The reason for the slumping was the fire hoses on the property and that they did not cause the problem. He did not like the fact that an Enforcement Order was issued as they were not at fault and he is anxious to get back to work. Everyone agreed that the CVS project has been a model of cooperation and good planning.

The Conservation Agent suggests that the Developer supply the town with additional funds to be held to assure that the work is completed according to the Order of Conditions. There will also be a need for additional consultations concerning the seepage under the wall and its complete repair as provided in the new BSC contract.

Mr. Mitchell is reluctant to provide any further funds. The City is holding \$21,000 now and the only work left to do is planting 4 shrubs and repairing the swale.

Commissioner Howard moves to keep the Enforcement Order in place and to continue the hearing to the next meeting, June 3<sup>rd</sup>. Commissioner Bik seconds the motion. All are in favor.

The project ran into bad luck with the fire which happened at snow melt time and the damage done by the fire hoses was an unforeseen occurrence. Ground water is also contributing to the problem even on a dry day. There have been no deliberate violations and the Enforcement Order allows them to work outside of the Order of Conditions.

#### **NOI - #002-1074 39 South Hunt Road (Kezer)**

The application by the City of Amesbury has been withdrawn. The plan has been revisited and has become a non-issue with the Conservation Commission.

#### **Request for a Certificate of Compliance - #002-0988 Timber Lane/Spring Hill**

This hearing has been continued to the June 3<sup>rd</sup> meeting.

#### **Request for a Certificate of Compliance – #002-1050 Route 110 (National Grid)**

This hearing has been continued to the July 1<sup>st</sup> meeting.

**NOI - #002-1015 Village at Bailey's Pond (Fafard)**

The Conservation Agent refers to a BSC final report titled Bailey's Pond Notice of Intent Peer Review dated 4/22/13 for specifics. There are fundamental outstanding issues based on their comments in the report.

Tom Hughes, Hughes Environmental, represents the owner.

The project proposes 34 building with a total of 136 units. Peer review is complete with storm water and engineering approved by BSC. The riverfront area has expanded in the last six months due to beaver habitat and the area has been reflagged and the plans have been redesigned as a result. To offset these impacts, the developer proposes a 7 to 1 mitigation ratio to reshape into a larger feature with an isolated wetland surrounded by the buffer zone. They will repair the impacted bank where the utilities will cross (after vehicles drive through). Invasive species will be removed and where soils have been impacted, they will enhance and supplement the soils and plant native species. They will restore and stabilize eroded areas on site with significant mitigation to restore the quality of the riverfront.

Gillian Davies, BSC Consultant Soil Scientist, conducted a peer review on site and she states that the criteria required in a riverfront is the complete absence of topsoil. All of her tests showed topsoil. The medium good for plants was evident. The riverfront is currently not degraded. She also states that there were a number of statements in Mr. Hughes letter differing in definition of degrading. She rates the topsoil at the site as a 7. See the BSC report. There is not a complete lack of topsoil and she would like to see a full alternative analysis along with a full cost analysis. The impacts to the waterfront area show inconsistencies and the storm water features need clarification. Their ideas for mitigation are good but does it qualify for the status. Riverfront regulations are very complex. BSC is doing the storm water review.

Shawn Malone, developer, states that BSC has signed off on the storm water review. He states that there will be significant impacts to the waterfront and they need to find out which impacts are compliant. He also states that the degraded area has not been delineated.

Tom Hughes, Hughes Environmental, states that the storm water engineering was addressed in January.

This is a very high profile project with fundamental disagreements regarding the amount of degraded topsoil. The Conservation Agent asks the applicant to provide an alternative analysis. The applicant has not provided scientific evidence of degraded topsoil while Ms. Davies has conducted on-site tests showing mineral and organic components of topsoil.

Mr. Malone disputes the amount of topsoil and states there is an area without topsoil agreed upon by BSC. Ms. Davies cites previous cases of determination of degraded topsoil.

Scott David, Hatter's Point abutter – He is concerned about a 30" outflow pipe that is draining into the Merrimac from the property. He asks that the Commission review what he has submitted regarding the outflow pipe. He also has a letter from Peter Manor from 2011.

## DRAFT

Laurie Erwin, Swett's Hill abutter – She feels that the dimension maps and slopes have not been addressed and wants the project discontinued.

Terry Cusick, Beacon Street abutter – He feels that the environmental impact will be huge. His yard floods now and will get worse with the development of the property.

Barbara Hathaway – 9 Swett's Hill abutter – She would like to know who owns the property. She was told that the original consent from the City suffices for all consents. She feels that the buffer zone of the pond is in questions and is concerned about finding hazardous materials at the corner of Summit Street that have been leeching from the property across the street. She feels the project is too big and will have a huge impact on the environment.

Dana Hathaway – 9 Swett's Hill abutter – He would like to see a three dimensional topological map as the project presents a topological challenge because of the slopes. He is concerned that runoff from 495 drains into Bailey's Pond. He is also concerned about school buses being able to maneuver in the project.

The Conservation Agent tells the Commission that the project developer is looking for closure this evening.

Shawn Malone – Project Developer – states that there will not be any buildings within 50' of the pond. There will be removal of invasive species. Topologically, the slopes will all be down to 3 to 1. The steep slopes will be left in a natural state. All proposed work has been fully vetted and reviewed and signed off by BSC. The drainage system has been addressed by BSC last December. The drainage design will grab water from 150 and 495 and will use an infiltration system to capture the water and will be a positive impact to the environment.

Commissioner Howard states that the Commission relies on the peer reviewers for clarification of the issues. Because of the disagreement between the developer and the consultant from BSC, she would like to continue the hearing to the next meeting and ask that the developer and the consultant work together and come to an agreement concerning the presence of topsoil.

Shawn Malone does not feel that waiting another month will help them come to an agreement and asks for closure to the hearing.

Commissioner Howard makes a motion for approval exactly as it appears as prepared by the Conservation Agent as follows:

Moved, that an Order of Conditions for DEP 002-1015 be approved under the Wetlands Protection Act and the Amesbury Wetlands Protection Ordinance, on the condition that no structures (including storm water structures) be located within the Riverfront Area, as shows on the project plans \_C-1 through C-12, C-13, C-13a and C-13b dated 12/7/12 and plans C-13D and C-14 are dated 2/15/14 and C-13c dated 5/1/13.

As reasons for this condition, the Commission finds that:

1. With the exception of some limited portions of trails, the Riverfront Area in the Project site is not degraded, within the meaning of the DEP Regulations for Riverfront Area. Therefore, the project is subject to the performance standards of 310 CMR 10.58(4), and not the standards for redevelopment of a degraded area under 310 CMR 10.58(5). This finding is supported by the analysis in the letter from BSC Group to the Commission, dated April 22, 2013 (the "BSC letter") which concludes that the project site is not a previously developed Waterfront Area, because the site is not generally characterized by an absence of topsoil, junkyards, or abandoned dumping grounds. Further, with the exception of some trail areas, the BSC letter finds the Riverfront Area is pervious and well-vegetated and provides Riverfront Area functions.
2. Even assuming that the Riverfront Areas were to be determined to be degraded, the Commission finds that the current project design and proposed mitigation would not meet the mitigation requirements of 310 CMR 10.58(5). As analyzed in the BSC Letter, the proposed mitigation would not offset the adverse impacts caused by creation of impervious surfaces and the development of forested land, including the impairment of wildlife habitat.
3. The applicant has not provided an adequate alternatives analysis, as required by 310 CMR 10.58(4), to show that there are no practicable and substantially equivalent economic alternatives to the work proposed within the Riverfront Area, with less adverse effects on interests protected by the Act. As analyzed in the BSC Letter, the applicant has not documented that it is necessary to locate proposed activities, including storm water structures, within the Riverfront Area. In particular, the Commission disagrees with the applicant's contention that reducing the number of buildings, so as to eliminate buildings within the Riverfront Area, would be inconsistent with the project purpose.

The Commission directs the Conservation Agent to draft a decision that includes these conditions and findings, to be presented to the Commission for its approval and signatures at the next meeting on June 3, 2013.

Commissioner Bik seconds the motion. All are in favor.

Commissioner Howard makes a motion to close the hearing. Commissioner Bik seconds the motion. All are in favor.

## **NEW BUSINESS**

### **RDA – 5 Riverfront Drive (Warford)**

The applicant proposes to install an in ground pool and patio in his back yard. The proposed area is within an existing lawn and adjacent to a storm water management system. The project would remove four to five maple trees that will be replaced with six to eight native trees and ten native shrubs. The pool would be saltwater and will backwash into a drywell located in the outer buffer zone under a play area. The deck is considered temporary and will not impact resources. It will be constructed in the driveway of the house and move into position by hand.

## DRAFT

Commissioner Tremblay makes a motion to issue a negative determination with the following recommendations that a sign be apparent during all work stating ACC002-5, a landscape plan be submitted, that 3 – 2.5” red maples be planted and 8 shrubs be planted anywhere on the property, a fence be installed of any type, erosion control implemented, the plants be replaced by November 15, 2013 and the Commission notified.

Commissioner Bik seconds the motion. All are in favor.

### RDA – 31 Pleasant Valley Road (Stockwood)

The applicant wants to install a pre-constructed 10’ X 20’ deck on property abutting the Merrimac River. The deck would be put together in the driveway and carried to the area by hand. There would be no impact to resources.

Commissioner Howard moves to issue a negative determination and asks that a sign be erected during all work with ACC002-3 and that all work be done according to the submitted plan. Commissioner Bik seconds the motion. All are in favor.

### RDA – 389 Main Street (Bailey)

The applicant proposed to restore a garage attached to a house. The rear of the garage is approximately 22 feet from the bank of the Merrimac River. No moving of soil or changes in drainage is proposed. The work is non-jurisdictional but the work site is. The footprint will remain the same. Jeff Picard, representing the owner, states that they will stay with the same roof style and will be reinforcing the floor. He mentions that the tree to the side of the garage will need to be trimmed for access.

Tracey Bradshaw, 387-388 Main Street abutter states that the applicant has an illegal dock on her property and she has asked him to remove it without success. Her concerns are: removal of the dock, drainage, erosion and accessing her property to do the work. The last time here was work on the garage (foundation) she lost a lot of her property.

The contractor assures the abutter that the roof will have gutters that will eliminate drainage problems onto her property. The Conservation Agent will address the illegal dock. The contractor is asked to revise the plan according to the discussion concerning the proposed trench around the garage and the outfall from the garage roof and continue the hearing to the June 3<sup>rd</sup> meeting. The Commission wants the new plan to show the elevation of the front of the new roof and the location of the drainage pipes.

The Conservation Agent asks the abutter to send him an email concerning the illegal dock.

Commissioner Howard moves to continue the hearing to June 3<sup>rd</sup> where a new plan will be submitted showing the roof elevation and pipe installation. Commissioner Tremblay seconds the motion. All are in favor.

RDA Maintenance Operations Route 150 & Interstate 495 Southbound (Leavenworth)

The Amesbury DPW Director has proposed maintenance work along three sections of 495 southbound. The work would include removal of mulch and sediments that have built up around existing flared pipe ends and in existing drainage swales and to redefine original lines and grades. All material would be removed from the site. The work is not pursuant to local regulations but is to State. They will clean and re-stabilize the ditch.

Commissioner Tremblay moves to issue a negative determination condition that all work be done according to the submitted plan. Commissioner Howard seconds the motion. All are in favor.

NOI 20 Cedar/4 Poplar Street (Seekamp)

The project consists of the renovation of an existing mill into apartments with associated landscaping, minor grading and demolition of two small additions. It will also include the rehabilitation of two gravel parking lots and associated storm water system. Jillian Davies of BSC has drawn the wetlands lines and the property is exempt from the Rivers Protection Act as the structure is historic. Portions of the proposed project are jurisdictional while the majority of the work is not. There will be no disturbance to the 25' zone and no building in the 50' zone. 14,000 square feet of parking is in the jurisdictional area. All drainage will be improved and will drain toward the street. The landscaping plan includes all native species. Jillian Davies, BSC, walked the site and made minor adjustments to the plan. She agrees there is a BVW but it is quite far away. The existing lot is degraded and this plan will improve the site. They will need more snow storage out of the 100' zone.

Michael Coles, 9 Poplar abutter is excited about the project and approves it as well as the developer.

The project is close to approval. The consultant needs additional information. The Conservation Agent will draft an Order of Conditions for the June 3<sup>rd</sup> meeting.

Commissioner Howard moves to complete the negotiations on the final work pursuant to BSC's comments and to have the Conservation Agent draft an Order of Conditions. Commissioner Tremblay seconds the motion. All are in favor.

RDA Camp Bauercrest (Green)

The project is to conduct maintenance of an existing storm water detention basin. The Camp states that they have received grant money to perform the work.

Commissioner Howard moves to issue a negative determination pursuant to the submitted plan. Commissioner Bik seconds the motion. All are in favor.



DRAFT

RDA 22 Merrimac Street (Mammola)

The applicant has installed a seasonal pre-existing dock but would like to lengthen it by 6 feet. The applicant states authorization for the dock pre-exists the adoption of the Amesbury Wetlands Regulations in 1970 and should not create any significant changes to the jurisdictional resources. The additional 6 feet have been approved by the Amesbury Harbormaster.

Commissioner Howard moves to issue a negative determination pursuant to the approved plans and that the applicant receive a yearly temporary dock permit from the Harbormaster. Commissioner Bik seconds the motion. All are in favor.

Commissioner Bik makes a motion to adjourn at 10:05 p.m.  
Commission Howard seconds the motion.  
All in favor

Transcribed by Susan Yeames